

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

RICHARD E. HANNER,)
Plaintiff)
vs.) Civil Action No. 04-941
DONALD J. HAMLIN, Wilkinsburgh) Judge Gary L. Lancaster/
Detective; DETECTIVE LQ,) Magistrate Judge Amy Reynolds Hay
Defendants)

REPORT AND RECOMMENDATION

I. RECOMMENDATION

It is respectfully recommended that the complaint in the above-captioned case (Docket No. 3) be dismissed for failure to prosecute.

II. REPORT

The plaintiff, Richard E. Hanner, has presented a civil rights complaint against Donald Hamlin and Detective LQ. In his complaint, plaintiff alleges that the defendants falsified certain reports and subjected plaintiff to an unlawful arrest, in violation of his constitutional rights.

On May 24, 2005, this Court issued an order directing service of the Complaint as directed by plaintiff. Subsequently, the United States Marshal filed a Notice of Inability to Effectuate Service and the Court then ordered personal service. The United States Marshal has been unable to effectuate personal

service inasmuch as plaintiff has failed to respond to the Marshal's request for proper service addresses.

It is clear that the punitive dismissal of an action for failure to comply with court orders is left to the discretion of the Court. Mindek v. Rigatti, 964 F.2d 1369 (3d Cir. 1992). In determining whether an action should be dismissed as a sanction against a party the Court must consider six factors. These factors, as set forth in Poulis v. State Farm Fire and Casualty Company, 747 F.2d 863, 868 (3d Cir. 1984), are as follows:

- (1) The extent of the party's personal responsibility.
- (2) The prejudice to the adversary caused by the failure to meet scheduling orders and respond to discovery.
- (3) A history of dilatoriness.
- (4) Whether the conduct of the party or the attorney was willful or in bad faith.
- (5) The effectiveness of sanctions other than dismissal, which entails an analysis of alternative sanctions.
- (6) The meritoriousness of the claim or defense.

Consideration of these factors reveals that the instant action should be dismissed.

Factors 1, 3, and 4 all relate to plaintiff's failure to comply with this Court's Order and failure to provide proper service information so that the case may proceed, which weigh heavily against him. Plaintiff's failure to respond to the United States Marshal with proper service instructions was not

only solely his personal responsibility but his failure to do so even four months later appears willful and constitutes a history of dilatoriness.

With respect to the second factor -- the prejudice caused to the adversary by plaintiff's failure to comply with this Court's Orders -- inasmuch as service has not been made there would appear to be no specific prejudice to defendants other than general delay. Similarly, factor No. 6 -- the meritoriousness of the claim -- will be weighed neither in favor nor against plaintiff, although it appears that defendants may have meritorious defenses. Nevertheless, "[n]ot all of these factors need be met for a district court to find dismissal is warranted." Hicks v. Feeney, 850 F.2d 152, 156 (3d Cir. 1988).

The final factor to consider is the effectiveness of sanctions other than dismissal. Since the plaintiff filed this action in forma pauperis, it does not appear that monetary sanctions are appropriate. However, because he has failed to provide service instructions so that the case may go forward, it appears that the plaintiff has no serious interest in pursuing this case. Therefore, dismissal is the most appropriate action for this Court to take, and it is respectfully recommended that the complaint in the above-captioned case be dismissed since no other sanctions will serve justice. Mindek, supra; Titus v. Mercedes Benz, 695 F.2d 746 (3d Cir. 1982).

Within ten (10) days after being served with a copy, any party may serve and file written objections to this Report and Recommendation. Any party opposing the objections shall have

seven (7) days from the date of service of objections to respond thereto. Failure to file timely objections may constitute a waiver of any appellate rights.

Respectfully submitted,

/s/ Amy Reynolds Hay
AMY REYNOLDS HAY
United States Magistrate Judge

Dated: January 3, 2006

cc: Richard E. Hanner
21363
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